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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,232	09/24/2004	Harald Reiter	DE 020074	3266

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EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3735

MAIL DATE	DELIVERY MODE
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09/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/509,232	Applicant(s) REITER ET AL.	
	Examiner Robert L. Nasser	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/5/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The examiner notes that applicant's means plus function constructions are not in the proper form and, as such, the examiner is not invoking 112, sixth paragraph. The proper form is sensing means for sensing, for example.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Akasaka et al 5785650. Akasaka et shows a system including a sensor, blood pressure or ekg, for example, connected to a detector that 24, which processes the data and determines if an emergency is present, and if it is, the home unit 12 transmits an emergency, i.e. alarm, signal to the center unit 14 (see column 4, line 34 to column 5, line 15). The examiner notes that in an emergency signal is sent, it is the sole message sent at that time. Claim 2 is rejected in that the home unit is a stationary unit. Claim 6 is rejected in that the system, monitors the absence of a heart beat, or cardiac arrest.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akasaka et al in view of Lugo 6287252. When an alarm is initiated in Lugo, Lugo

controls a cellular phone to make contact with a medical professional. Hence, it controls a domestic device. With respect to claim 4, Lugo further teaches providing location information for the patient so that aid may be sent to the user.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akasaka et al in view of Bornn et al 5348008. Bornn further teaches providing an out of range signal when the user is out of range of the station. As such, it would have been obvious to modify Akasaka to indicate when the user is out of range, to ensure that the patient is continuously monitored.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akasaka et al in view of Myklebust et al 6351671. Myklebust shows a remote monitoring device such as Akasaka et al where the, where the home unit includes a defibrillator/telephone combination that allows a user to communicate with a professional for using the defibrillator. As such, it would have been obvious to modify Akasaka et al to use such a defibrillator/telephone combination, to enable immediate treatment to be performed on the patient.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akasaka et al in view of Tong 2003/0171661. Tong teaches the use of a motion sensor with an ekg system to compensate for the effects of motion artifact. As such, it would have been obvious to modify Akasaka et al to use such a motion sensor, to eliminate errors in measurement.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akasaka et al in view of Tong, as applied to claim 8 above, further in view of Bornn et al.

Akasaka does not disclose the form of the sensing device. Bornn shows a device for the identical purpose that has the sensors incorporated into a garment. Hence, it would have been obvious to modify Akasaka to use such a garment, as it is merely the substitution of one known equivalent sensor for another.

Applicant's arguments filed 7/5/2007 have been fully considered but they are not persuasive.

Applicant has asserted that Akasaka does not trigger an alarm based on a feature of the signal., as Akasaka triggers the alarm on the absence of the signal. The examiner notes that Akasaka triggers the alarm on the absence of a normal signal. It is the examiner's position that this means that instead of a normally varying signal, the alarm is generated when the signal flatlines. Detecting a constant non-varying signal is still detecting a feature of the signal.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

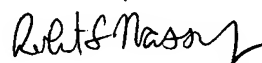
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert L. Nasser
Primary Examiner
Art Unit 3735



RLN
September 14, 2007